

RAJASTHAN TAX BOARD, AJMER

Appeal No.573/2012/Kota

M/s Kirti Agarwal & Sons,
Jawahar Nagar, Kota

.....Appellant

Vs

(1) C.T.O., Special Circle-I, Kota &
(2) The Deputy Commissioner (Appeals),
Commercial Taxes, Ajmer

.....Respondents

SB

Shri Madan Lal, Member

Present:-

(1) Shri M.L. Patodi
(2) Shri Ishu Jain, Advocates

.....For Appellant


(3) Shri Anil Pokharna, DGA

.....For Respondent

JUDGMENT

Dated: 24/08/2015

1. This appeal has been filed under section 83 of the RVAT Act (in short "The Act") against the order dated 13.02.2012 by the Dy. Commissioner (Appeals), Ajmer (in short "Appellate Authority") disallowing the appeal against the order dated 30.11.2010 by the Commercial Taxes Officer, Special Circle-I, Kota (In short "Assessing Officer") passing for the year 2008-09 under section 24 (2) (B), 55, 58, 61, 64 & 65 of the Act and creating a disputed demand of Rs. 1,26,817 as tax, Rs.70,500/- as interest & penalty Rs. 2,55,044/-, against which appellant preferred this appeal.
2. Heard counsels of both the parties.
3. The learned advocate contended that the Assessing Officer imposed additional tax liability @4% of Rs. 1,26,817/- on Rs. 31,66,987/- under the facts and circumstances of the case and further the Appellate Authority confirmed the levy. The Assessing Officer has not proved any concealed sale in the hands of the appellant. According to Sec. 10 of RVAT Act,



burden to prove concealment of sale lies on the department, but in the instant case the Assessing Officer has not proved any concealed sale in the hands of the appellant and created the demand without making any enquiry, regarding alleged transaction, hence imposing additional tax liability is illegal, against the law and deserves to be set aside.

4. He further argued that the Assessing Officer imposed penalty U/s. 61 of Rs. 2,53,634/- and further the Appellate Authority has confirmed the same; but before imposition of penalty the Assessing Officer has not proved any concealed sale in the hands of the appellant, hence without proving any concealed sale in the hands of the appellant firm, imposing penalty is illegal and against the law and deserves to be set aside.
5. The learned advocate contended that the Assessing Officer imposed penalty U/s. 58 of Rs. 410/- & U/s. 64 of Rs. 1000/- and further the Appellate Authority has confirmed the same; but before imposition of penalty the Assessing Officer has not issued any proper show cause notice, hence imposing penalty is illegal, against the law and deserves to be set aside.
6. The learned advocate has also contended that the Assessing Authority imposed interest U/s. 55 of RVAT Act of Rs. 27,247/- + Rs. 43,073/-, and further the Appellate Authority has confirmed the same. Since, imposition of tax liability is already in dispute, imposing interest is also disputable and deserves to be set aside.
7. On the other hand the learned DGA strongly opposed the submissions of the learned advocate and contended that adequate opportunities have been given as against claimed by the learned Advocate Shri Patodi to explain and to verify the VAT paid and even disputed transactions from books of accounts.
8. I have gone through the relevant records / arguments and evidences so submitted.
9. The Assessing Officer observed during the assessment proceedings that some purchases and VAT paid there on by the appellant was dubious on verification and enquiry, adequate opportunity also provided to the appellant assessee to clarify the discrepancy in books of accounts maintained by him and VAT-9 form submitted to the Commercial Tax Department but no avail.



10. Looking into the facts and circumstances of the case and perusal of record it is obvious that the order ^{has been} passed by the Assessing Officer, after providing an opportunity of being heard to the appellant to furnish evidences so as to give benefit to the Appellant but he failed to submit the evidences in support of his claim even at this stage also. He failed to submit any evidence or document in confrontation of charge attributed by the Assessing Officer as to disputed transactions. Therefore, I find no pulp in the appeal consequently confirm the order of both the authorities below.

11. In a result, appeal filed by the Appellant is dismissed.

Order pronounced.


24.8.2015
(MADAN LAL)
MEMBER